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DEPARTMENT OF BUSINESS AND INDUSTRY
**LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD**

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December 4, 2014

**MINUTES OF THE WORKSHOP TO SOLICIT COMMENTS FOR NEW REGULATIONS
OR CHANGES TO EXISTING REGULATIONS PERTAINING TO ELECTIONS**

A workshop of the Local Government Employee-Management Relations Board, properly noticed and posted pursuant to the Nevada Open Meeting Law, was held on Wednesday, December 3, 2014, at the hour of 2:00 p.m. at the Bradley Building, 2501 E. Sahara Avenue, Room 200, Las Vegas, Nevada 89104. The meeting was video-conferenced to the Department of Business and Industry Director's Office, 1830 College Parkway, Suite 100, Carson City, Nevada 89706.

The meeting was conducted by EMRB Commissioner Bruce K. Snyder.

Also present representing the EMRB were: Philip E. Larson, EMRB Chairman
Scott Davis, Esq., Deputy Attorney General
Marisu Romualdez Abellar, Board Secretary

Present from the public in Las Vegas were: Grant Davis, Teamsters Local 14
Frank Flaherty, Dyer Lawrence
Yolanda Givens, Clark County District Attorney's Office
Sandy Jeantete, Clark County Human Resources Dept.
Jason Rabinowitz, Teamsters Local 14
Don Reardon, Teamsters Local 14
Jen Sarafina, Kamer Zucker Abbott
Manuel Valenzuela, Teamsters Local 14
Sarah Varela, McCracken, Stemerman & Holsberry
Nicole Young, Kamer Zucker Abbott

Present from the public in Carson City was: Chris Syverson, City of Sparks

The Agenda:

Item 1 Public Comment.
No public comment was offered.

Item 2-10 *Commissioner Snyder stated that he was going to open items 2 through 10 of the agenda at the same time and let individuals speak on any and all of the subjects listed for those agenda items. He further emphasized that the materials provided were not to be considered as a recommendation by the Board but were proposals previously proposed to the Board by staff or by employee organizations, but never adopted. Rather, the purpose of this particular workshop was to hear from the user community so that the Board would have additional input before it considers this topic. Finally, Commissioner Snyder stated that the result of this workshop would lead to further workshops once the Board has discussed this issue.*

Deputy Attorney General Scott Davis then provided background information on the origin of the larger of the two handouts provided to the attendees.

The agenda items pertaining to elections are as follows:

- 2. The need for additional definitions related to elections.*
- 3. The use of interest cards.*
- 4. The provision of employee lists to employee organizations.*
- 5. The determination of majority support, including any standards thereto.*
- 6. The conduct and procedure related to elections.*
- 7. The conduct and procedure related to runoff elections.*
- 8. The challenging of recognition by another employee organization.*
- 9. The payment of costs related to an election.*
- 10. The means of showing majority support without an election.*

Sarah Varela discussed her law firm's proposal, a copy of which is attached, which was submitted to the EMRB last week. She stated that the proposal would amend subsections 7 and 10 of NAC 288.110 and also add a new subsection 11. She further stated that the goal of the proposal was to bring an end to continual runoff elections by allowing an additional method for an employee organization to demonstrate majority support. This was necessary because the Nevada Supreme Court had previously held that the term "majority" means a majority of the bargaining unit and not just a majority of those who may have voted in an election. After holding both an election and a subsequent runoff election, the employee organization who received the most votes would then have one year to provide a verified membership list showing majority support.

Ms. Varela also briefly spoke to the issue of costs. She stated that her client(s) would object to having the challenging union pay for the cost of an election, as doing so would chill employee rights. Upon a question posed by Commissioner Snyder, Ms. Varela stated that the preferred method should be having the EMRB pay for the election, or at the least, using some cost sharing method.

Commissioner Snyder then stated that subsection 11 of the proposal would have the effect of having the recognized union decertified and thus asked whether no one would be representing those employees. Ms. Varela stated that the union who received the most votes would then be recognized for one year and would have that one-year period to provide the verified membership list showing majority support but

that, perhaps, the language of the proposal could be cleaned up somewhat to better state that position.

Commissioner Snyder thereupon asked her what would happen if after one year the union could not show majority support. She then stated that perhaps there could be a new election but that the current default, of leaving the current union as the recognized union, even if it received fewer votes than the challenger, was wrong.

Frank Flaherty then commented on the issue of elections. He stated that the default system favors the incumbent because doing so enhances labor stability. He furthermore stated that the proposal offered by Teamsters Local 14 is beyond the authority of the EMRB in that the EMRB cannot alter the current so-called supermajority rule. He specifically mentioned that the Nevada Supreme Court has twice held that an outright majority of the bargaining unit is required to determine the winner of an election and that this can only be changed by an act of the legislature.

Mr. Flaherty stated that elections are both expensive and disruptive. He cited that the National Labor Relations Board and all other 32 states that allow public sector collective bargaining require a challenger to show a certain level of support before an election may be held and that a challenger cannot simply file a petition to obtain an election.

Commissioner Snyder asked Mr. Flaherty whether the EMRB, via a regulation, could amend the so-called supermajority rule, despite two Nevada Supreme Court decisions, because it was the EMRB that originally set that standard. Mr. Flaherty responded that it could not and that the rule could only be changed by the legislature.

Commissioner Snyder also inquired as to whether Mr. Flaherty was in favor of the use of interest cards to show support, which was replied to in the affirmative.

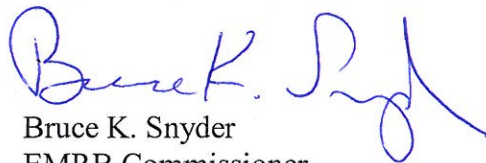
Sarah Varela then spoke a second time, stating that although the Nevada Supreme Court has interpreted NRS 288 to require an outright majority of those in the bargaining unit, that despite this fact nothing would prohibit the EMRB from adding another method to determine an ultimate winner.

EMRB Chairman Phil Larson then brought up the issue of budgeting for elections and whether sufficient funds were in the budget. Commissioner Snyder stated that elections currently are a rare occurrence and thus no monies had been budgeted for them. Instead, the current election, as an example, required a work program or budget amendment.

Jen Sarafina then stated that her reaction is that it would be fair for the EMRB to pay for the first election between two parties, but that perhaps after then there should be some form of cost sharing amongst the employee organizations.

- Item 11** Additional Period of General Public Comment.
No public comment was offered.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Bruce K. Snyder", with a stylized flourish at the end.

Bruce K. Snyder
EMRB Commissioner

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MEMORANDUM

To: Nevada Local Government Employee-Management Relations Board
From: Kristin Martin 
CC: Larry Griffith
Re: December 3, 2014 Workshop Regarding NAC 288
Date: November 25, 2014

Teamsters Local 14 submits the following proposal to amend NAC 288.110. *Italicized text represents new language.*

Proposed Regulation

7. If the results are inconclusive, the Board will conduct a runoff election *unless a verified membership list is submitted in accordance with subsection (d)(ii) of this regulation.*

* * *

10. An employee organization will be considered the exclusive bargaining agent for employees within a bargaining unit, pursuant to an election, if:

(a) Challenged ballots are insufficient in number to affect the results;

(b) No runoff election is to be held;

(c) No timely objections are filed; and

(d) *Either (i) The election demonstrates that the employee organization is supported by a majority of the employees within the particular bargaining unit; or (ii) within one year after the election, the employee organization that received a majority of votes cast in either an initial or runoff election submits to the*

Board a verified membership list showing that a majority of the employees in the bargaining unit are members of the employee organization.

11. If the election demonstrates that the recognized employee organization is not supported by a majority of the employees in the bargaining unit, the recognized employee organization shall be deemed decertified and shall no longer be the collective bargaining representative for employees in the bargaining unit.

Explanation of Proposal

The Nevada Supreme Court's decision in *Education Support Employees Ass'n v. EMRB et al.*, Case Nos. 42315 & 42338 (Dec. 21, 2005) created a quandary for the EMRB. The Court held that the word "majority" in NRS 288.160(4) means that to prevail in an election between competing employee organizations, any employee organization needs to win votes from a majority of all potential voters. This is impossible if the voter turnout is low. In mid-2006, the EMRB conducted a mail ballot representation election between Local 14 and ESEA. There were 10,386 employees in the bargaining unit but only 4,797 ballots were cast, of which 2,711 ballots were cast for Local 14; 1,932 for ESEA; and 93 for "No union." The EMRB was not permitted to declare Local 14 to be the winner of that election.

NAC 288.110(7) requires runoff election when election results are inconclusive, as they were in the election between Local 14 and ESEA. Judge Cory of the District Court, affirmed by the Supreme Court, held that this provision is mandatory. The EMRB attempted to amend NAC 288.110(7) last year to give itself discretion not to hold runoff elections. The Legislative Commission rejected the proposed amendment. The runoff election between Local 14 and ESEA is scheduled for early 2015. If a majority of employees do not vote at all or do not vote for one employee organization, the results will again be inconclusive and, under NAC 288.110(7), the EMRB will have to hold yet another runoff election.

The proposed regulation would provide a way for the EMRB to end this process and respect the choice of employees who exercise their right to vote. The proposal allows the employee organization that is the most popular among voters to become the exclusive representative based on its membership list. This is fair. In many election systems, the outcome is determined by the votes actually cast. The NLRB presumes that the votes of employees who actually vote reflect the will of those who do not vote. Our political system operates on the same presumption. A membership list presented by the employee organization that wins the election under ordinary vote-counting rules can serve as proof that a sufficient number of nonvoters support that employee organization for it to have majority support.